

**MINUTES**

**MONTANA SENATE  
56th LEGISLATURE - REGULAR SESSION  
COMMITTEE ON STATE ADMINISTRATION**

**Call to Order:** By **CHAIRMAN MACK COLE**, on February 5, 1999 at  
10:00 A.M., in Room 331 Capitol.

**ROLL CALL**

**Members Present:**

Sen. Mack Cole, Chairman (R)  
Sen. Don Hargrove, Vice Chairman (R)  
Sen. Jon Tester (D)  
Sen. Jack Wells (R)  
Sen. Bill Wilson (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Keri Burkhardt, Committee Secretary  
David Niss, Legislative Branch

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 352, SB 356, 1/30/1999  
Executive Action: SB 352, HB 66, HB 194, HB 197

**HEARING ON SB 356**

**Sponsor:** SEN. ARNIE MOHL, SD 39, KALISPELL

**Proponents:** Mike Foster, Montana Contractors Association  
George Oshensky, Confederated Salish and Kootenai

**Opponents:** None.

**Information:** Wymand McDonald, Coordinator of Office of Indian  
Affairs, Office of the Governor  
Marv Dye, Montana Department of Transportation

**{Tape : 1; Side : A; Approx. Time Counter : 6 - 18}**

**Opening Statement by Sponsor:**

SEN. ARNIE MOHL, SD 39, Kalispell, explained that the commission for the Department of Transportation has a director and five commissions selected by the Governor. He said that a lot of work is done on reservations and the reservations do not have representation. In the original bill, he had six commissions instead of five. The sixth member would not represent a financial district but would have to be from a reservation. The Governor had some concerns with the idea that the sixth commission did not represent a financial district. Therefore, they changed the bill to say, "Of the members appointed from districts 1,2,3,4, and 5, at least one must have specific knowledge of Indian culture and tribal transportation needs". This does not mean that the person has to be a tribal member. This might be better than the original proposal because it opens up the communications a lot more. He said there are problems, not only on reservations but all over the state. He added that by having a commissioner who has full knowledge of Indian culture and tribal transportation needs, the Department of Transportation will have better communications. He has worked with the tribal council to change regulations to allow Native American workers from one reservation to continue working with the crew on other reservations, so those people don't have to be laid off. After coming back from the council meeting, he felt the biggest problem was the lack of communications. There is an amendment to this bill **EXHIBIT (sts29a01)**. There is concern that the law does not say how they have to be represented. He said that many times people on the highway commission do not have any knowledge or experience with roads. The amendment requires one member to be a current or former highway construction contractor that will be appointed by the governor from a list, of three nominees, submitted by the Montana Contractors Association. The only time this would be a conflict of interest would be if a commissioner is bidding on a project, in such a case, the commissioner could not vote on awarding that project. It will be beneficial to the commission to have someone with some experience. Many boards have members, who have the technical experience, but through there professions have conflicts in one way or another. He added that the one commissioner will not benefit because the other four members have the right to vote as well.

**{Tape : 1; Side : A; Approx. Time Counter : 18 - 26}**

**Proponents' Testimony:**

**Mike Foster, Montana Contractors Association**, said that they support the bill and the amendment being proposed. He explained that **SEN. MOHL** used to be the president of the Montana Contractors Association and was a chairman on their Highway Executive Committee. The committee is made up of highway contractors in their association. The meetings are attended by the Department of Transportation and the Federal Highway Administration. **SEN. MOHL**, as chairman of that committee, led the way in opening up discussion concerning the tribes in Montana. There are issues that contractors have to deal with when they do highway construction work on the reservations. **SEN. MOHL** has facilitated better communications with some of the tribes and they have benefitted greatly. **SEN. MOHL** felt that a good way for the tribes in Montana to have some input and authority, with issues that are associated with highway construction, is to have a member on the transportation commission be a Native American or someone who is knowledgeable of Native American issues. This is another step in an ongoing effort to having the Native Americans of Montana more involved in highway construction matters. Also, he addressed the proposed amendment. He explained that an initial reaction may be that a member from the industry will have an automatic conflict of interest, but most commissions in this state have an industry representative on the board. The boards and commissions work and work well. The contractors have expertise that no one else has about highway construction and will give the commission insight into the issues and concerns of contractors. He handed out copies of the existing Montana Transportation Commission **EXHIBIT (sts29a02)**.

*{Tape : 1; Side : A; Approx. Time Counter : 26 - 44}*

**George Oshensky, Confederated Salish and Kootenai**, read the testimony of Michael Pablo, the Chairman of the Confederated Salish and Kootenai Tribes and the Chairman of the Montana Wyoming Tribal Council **EXHIBIT (sts29a03)**. He said that throughout this legislative session we are going to see efforts to try and bring the Indian people onto these committees and commissions to try to have their input on things. He added that they are 7% percent of the population and 9% percent of the land mass. The only way to bring our way out of the entangled mess of jurisdiction is to bring the Indian people into these things to get their input. He urged the committee to pass the bill.

**Informational Witnesses:**

**Wymand McDonald, Coordinator of Office of Indian Affairs, Office of the Governor**, explained that he is not speaking in behalf of the Governor at this time. He said this is a positive step

forward to include the Indian people of Montana. He said he has some concerns with the amendment. In some cases, selecting a non Indian appointed to the board, who was to represent the Indian people of Montana could cause objections with the majority of the tribal states, unless the person was from Indian decent and from one of the tribes in Montana. Secondly, he questioned which members the contractor experience applies to. He said that if it only places this qualification to the person who is minority member, it may cause legal consequences.

**Marv Dye, Montana Department of Transportation,** said that he came to the hearing to answer any questions the committee may have.

**Questions from Committee Members and Responses:**

**SEN. WELLS** asked **SEN. MOHL** how he viewed the recommended amendment that would change the stated position in the bill from having a member who is knowledgeable to a member who is a tribal member. **SEN. MOHL** explained that the Governor wanted the option to choose someone from the reservation or someone who is knowledgeable.

**SEN. TESTER** asked **Marv Dye** to explain what the commission does. **Marv Dye** explained that the commission, by statute, is made up of five people. He said that one member represents each financial district. The bulk of their activities are selecting projects and approving all the information that goes into the contractual language. He added that all specifications are ran through the committee for better input. The commission sets the speed zones and is the board of appeals for disputes with contractors in areas of liquidated damages.

**SEN. TESTER** asked **Mike Foster**, how many highway construction companies comprise the Montana Contractors Association. **Mike Foster** said that they have about 120 members that are contractors and of those he estimated over half are in highway construction.

**SEN. COLE** asked **SEN. MOHL** where it was stipulated in the bill that the commissioner would not have to be a tribal member if he lived on the Indian reservation. **SEN. MOHL** said that the person does not have to live on the Indian reservation, he just must have full knowledge of the tribal needs. He added that when he originally drafted the bill, he wanted the commissioner to be a tribal member but the Governor wanted it to be able to choose someone with specific knowledge of the Indian culture and tribal transportation needs. He said that if it is limited to a tribal member, a conflict could arise as to which tribe to choose the member from. The Governor has the option to pick someone that the Tribal Council recommends. **SEN. COLE** said that one member

must have full knowledge of Indian culture and transportation needs, but the person may have both or may not. Further, he said that if the government appoints someone with those specific knowledges, he can see a problem arising with the people in that district feeling like they are not getting the full representation on the board as the people from other districts. He asked why a member was not added to the present five members, rather than getting into a conflict with one of the present districts. **SEN. MOHL** said that he originally created a sixth member, but that also created problems because the member doesn't represent any financial district, therefore, doesn't have a say. He added that the tribal reservations are in these districts. Currently, there is not a set of guidelines, for the Governor, in choosing these commissioners. He said that they are trying to set up a few qualifications for these members. One out of the five will have tribal knowledge and one out of the five will have experience in highway construction. He doesn't think that the districts care that much, as long as they are well represented. **SEN. COLE** asked if there are any other limitations other than the restriction on the number of commissioners who are members of the same political party. **SEN. MOHL** said there were no other restrictions other than, no more than three members from the same political party. He said that presently there are two democrats, two republicans, and one independent.

*{Tape : 1; Side : A; Approx. Time Counter : 44 - 51}*

**Closing by Sponsor:**

**SEN. MOHL** stated the two positions are two different positions. He explained that the member can only represent the tribes or the contractors, not both. The tribal representation will be from one district, and the contractor will be from another district. This creates some criteria for the selection of these commissions. He urged the committee to pass this bill.

**EXHIBIT (sts29a04)** was entered into the record from the Fort Peck Tribes.

**EXHIBIT (sts29a05)** was entered into the record from the Black Feet Nation.

**HEARING ON SB 352**

**Sponsor:** **SEN. DALE MAHLUM, SD 35, MISSOULA**

**Proponents:** **Jim Jacobsen, Administrator, Veterans Affairs  
Division  
Hal Manson, American Legion  
Dee Brown**

**Opponents:** None

**Information:** Matthew Cohn, Department of Commerce

**Opening Statement by Sponsor:**

**SEN. DALE MAHLUM, SD 35, MISSOULA**, explained that this is an act designating the Missoula Memorial Rose Garden as a State Veterans' Memorial Rose Garden and as a State Korean Veterans' Memorial. He said that Missoula has a very large contingent of veterans who have spent many years putting together a beautiful area that encompasses shrines dedicated to the memories of departed veterans. These are important to the living survivors and their families. This bill has no conflict with other veteran memorials in our state. This bill was requested by various members of the veteran committees in Missoula.

**Proponents' Testimony:**

**Jim Jacobsen, Administrator, Veterans Affairs Division**, said in the behalf of the 92,000 thousand veterans and their 140,000 thousand family members, the division is in full support of the memorial garden for veterans as well as the Korean memorial.

*{Tape : 1; Side : B; Approx. Time Counter : 48 - 51; Comments : Tape recorder problem, did not record this portion, in the beginning of side B.}*

**Hal Manson, American Legion**, urged the committee's support.

**Dee Brown**, explained that she has a family line of veterans and encourages the committee to support this bill.

**Informational Testimony:**

**Matthew Cohn, Department of Commerce**, explained that the Missoula memorial rose garden would be identified on the next reprint.

**Closing by Sponsor:**

**SEN. MOHL** explained that other cities are fine with the memorial being in Missoula. He encouraged the committee to pass the bill.

*{Tape : 1; Side : B; Approx. Time Counter : 51 - 71; Comments : Resumed normal taping at 51.}*

**EXECUTIVE ACTION ON SB 352**

**Discussion:**

**SEN. WELLS** said that the bill says, "Korean veteran memorial," which may cause confusion. The way its stated, it sounds like Korean veterans rather than veterans of the Korean conflict.

**SEN. COLE** said that it seemed confusing as to whether they were establishing a new memorial act.

It was decided that conflict should be entered into the bill.

**Motion/Vote:** **SEN. WELLS** moved that **SB 352 BE AMENDED. Motion carried 5-0.**

**Motion/Vote:** **SEN. WELLS** moved that **SB 352 DO PASS AS AMENDED. Motion carried 5-0.**

**EXECUTIVE ACTION ON HB 66**

**Discussion:**

**SEN. COLE** said he doesn't believe that Fish, Wildlife and Parks should be exempt from this bill.

**Motion:** **SEN. COLE** moved that **HB 66 BE AMENDED.**

**Vote:** Roll call vote was taken. **Motion carried 4-0.**

**Motion/Vote:** **SEN. HARGROVE** moved that **HB 66 BE CONCURRED IN AS AMENDED. Motion carried 4-0.**

**EXECUTIVE ACTION ON HB 194**

**Motion:** **SEN. WELLS** moved that **HB 194 BE CONCURRED IN.**

**Discussion:**

**SEN. WELLS** said that he likes the idea of having the cumulative amount and the number of people being effected.

**SEN. COLE** said that there is no fiscal impact.

**Vote:** **Motion carried 4-0.**

***{Tape : 1; Side : B; Approx. Time Counter : 71 - 88}***

**EXECUTIVE ACTION ON HB 197****Discussion:**

Discussion was held as to what a rulemaking note is. Currently, there is no such thing as rulemaking note. It is patterned somewhat like a Fiscal Note. The same process that is used for a Fiscal Note will probably apply to this.

**SEN. HARGROVE** said that this might complicate floor action on second reading. He added that it could be used as an obstructionist tool.

**Motion:** **SEN. HARGROVE** moved that **HB 197 BE AMENDED.**

**SEN. WELLS** said that second reading is too late. He agreed that it might be used as a diversionary or blockading tactic. He said he would like to find a way for the members, of the house it is introduced in, to bring it up. He added that the committee may be sufficient.

**Vote:** **Motion carried 4-0.**

**Discussion:**

Discussion was held on , "the subject matter to be addressed by rules that could instead have been adequately addressed in the bill and the reasons why the subject matter was not addressed in the bill". It was decided that the statute should be a broad guidance, not a micro management tool. The agency that would be adopting the rules would use this as an opportunity to clarify things they didn't understand.

**Motion/Vote:** **SEN. HARGROVE** moved that **HB 197 BE CONCURRED IN AS AMENDED. Motion carried 4-0.**

***{Tape : 1; Side : B; Approx. Time Counter : 88 - 107}***

**EXECUTIVE ACTION ON HB 198****Discussion:**

**SEN. WELLS** said he is concerned with the assumption on the Fiscal Note that says that extensive economic impact statements could significantly increase costs but the costs are indeterminable.



He said there are some benefits of this legislation but he is concerned that it will increase costs down the line.

**SEN. HARGROVE** said that SB 11 deals with the reorganization of committees.

**SEN. WELLS** said that SB 11 gets rid of the code committee and this bill says "upon written request of the administrative code committee".

**David Niss, Legislative Division**, explained that SB 11 puts the code committee to sleep and parcels the committees functions out among the six large committees, which will accede to the powers of the code committee. At some point this bill and the bill creating the reorganization of the interim functions, will have to be coordinated. He said he doesn't know if SB 11 has the coordination instruction. He clarified that this is an existing ability of the code committee, they are just adding the 15 legislators.

The committee decided to hold off acting on this bill. **SEN. WELLS** offered to gather some information from the sponsor of the bill. They discussed current law, that the code committee can request economic income statements. This bill just adds in the request from legislators.

#### EXECUTIVE ACTION ON HB 36

Motion: **SEN. HARGROVE** moved that **HB 36 BE CONCURRED IN.**

#### Discussion:

**SEN. WELLS** questioned the word militia being taken out of the bill.

The committee decided that the sponsor should answer some questions for the committee before action is taken.

**SEN. HARGROVE** withdrew his motion that **HB 36 BE CONCURRED IN.**

#### DISCUSSION

The committee discussed having an information meeting on SB 228 on the upcoming Monday. Various members of the working group would be invited to come in to answer questions from the committee.

**ADJOURNMENT**

Adjournment: 11:46 A.M.

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SEN. MACK COLE, Chairman

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KERI BURKHARDT, Secretary

MC/KB

**EXHIBIT (sts29aad)**